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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jazi Kat 4659 Rockridge LLC, et al.,

No. CV-23-00716-PHX-ROS

10 Plaintiffs,

ORDER

11 v.

12 Travelers Casualty Insurance Company of
13 America, et al.,

14 Defendants.

15 Plaintiffs suffered damage to two commercial buildings they own. Those buildings
16 were covered by an insurance policy issued by Defendants. Pursuant to the insurance
17 policy, if Plaintiffs and Defendants were unable to agree on “the amount of loss,” either
18 side could invoke a formal appraisal process. That process requires each side appoint “a
19 competent and impartial appraiser” and those two appraisers must select “an umpire.” The
20 two appraisers then determine the amount of loss but, “[i]f they fail to agree” on the amount
21 of loss, they must “submit their differences to the umpire.” (Doc. 25 at 135). The Court
22 previously determined this process is a form of arbitration such that the Federal Arbitration
23 Act applies. (Doc. 16 at 3).

24 The parties selected their appraisers, an umpire was selected, and the parties are now
25 awaiting the umpire’s decision. Believing the umpire is taking too long to issue his
26 decision, Plaintiffs seek an “order directing the umpire to render a decision no later than
27 August 18, 2023.” (Doc. 25 at 6). Plaintiffs explain they are at risk of losing the underlying
28 buildings to foreclosure if no decision is issued by that date because the award will be

1 crucial in obtaining refinancing. (Doc. 25 at 5). Defendants respond that they agree the
2 umpire should issue a decision as soon as possible. However, Defendants argue there is
3 no basis for an Order mandating immediate action by the umpire.

4 Plaintiffs argue the Court should look to Arizona’s arbitration laws but the Federal
5 Arbitration Act (“FAA”) applies to the parties’ agreement. *Sovak v. Chugai Pharm. Co.*,
6 280 F.3d 1266, 1269 (9th Cir. 2002) (holding FAA will apply unless parties “clearly
7 evidence their intent to be bound by” state arbitration rules). There is no provision in the
8 FAA allowing for the type of mid-arbitration action Plaintiffs seek. In fact, the Ninth
9 Circuit has noted “a district court’s authority is generally limited to decisions that bookend
10 the arbitration itself.” *In re Sussex*, 781 F.3d 1065, 1071 (9th Cir. 2015). A district court
11 may take action before arbitration begins, such as by ordering the dispute proceed in
12 arbitration instead of litigation. A district court can also take action after arbitrations ends,
13 by determining if the arbitration award should be affirmed, vacated, or modified. But the
14 FAA contemplates very little mid-arbitration involvement by a court. *Id.* Plaintiffs have
15 not cited any provision of the FAA or current caselaw allowing a court to direct an
16 arbitrator to issue a decision.

17 The Ninth Circuit has noted district courts might be able to intervene mid-arbitration
18 in “extreme cases.” *Id.* at 1072. But the Ninth Circuit has cast doubt on whether such an
19 extreme case would ever exist because the Ninth Circuit has never found mid-arbitration
20 intervention to be appropriate. “[C]ost and delay alone do not constitute the sort of severe
21 irreparable injury or manifest injustice that could justify” mid-arbitration intervention. *In*
22 *re Sussex*, 781 F.3d 1065, 1075 (9th Cir. 2015).


23 Here, Plaintiffs claim they are being financially harmed by the umpire’s delay. That
24 type of harm is not sufficient. Admittedly, Plaintiffs also claim there is a danger their real
25 property will be lost if the umpire does not make an award. “It is well-established that the
26 loss of an interest in real property constitutes an irreparable injury.” *Park Vill. Apartment*
27 *Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1159 (9th Cir. 2011). However,
28 Plaintiffs have not provided facts that such loss is certain to occur, nor have they provided

1 authority that the loss of real property in this case would support mid-arbitration
2 intervention which is only granted in “extreme cases.” *In re Sussex*, 781 F.3d at 1075.
3 Mid-arbitration intervention will almost never be merited, and Plaintiffs have not carried
4 their burden here. The Court will not order the umpire to make a final decision.

5 Accordingly,

6 **IT IS ORDERED** the Application (Doc. 25) is **DENIED WITHOUT**
7 **PREJUDICE.**

8 Dated this 14th day of August, 2023.

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11 
12 Honorable Roslyn O. Silver
13 Senior United States District Judge
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